

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JASON MONTANYE,

Plaintiff,

-against-

5:11-CV-1245 (LEK/ATB)

MICHAEL J. ASTRUE, Commissioner
of Social Security,

Defendant.

DECISION and ORDER

I. INTRODUCTION

This matter comes before the Court following a Report-Recommendation filed on November 16, 2012 by the Honorable Andrew T. Baxter, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and L.R. 72.3(d) of the Northern District of New York. Dkt. No. 16 (“Report-Recommendation”). After fourteen days from the service thereof, the Clerk has sent the entire file to the undersigned, including the Objections by Plaintiff Jason Montanye (“Plaintiff”), which were filed on December 3, 2012.¹ Dkt. No. 17 (“Objections”).

The Court presumes the parties’ familiarity with the facts and procedural history of the case. For a detailed account of this background, reference is made to the Report-Recommendation, which incorporates both parties’ statements of facts. In his Report-Recommendation, Judge Baxter recommended that the Commissioner’s decision denying Plaintiff Social Security disability benefits be affirmed in full. Report-Rec. For the following reasons, the Court adopts the Report-Recommendation in its entirety and dismisses Plaintiff’s Complaint. Dkt. No. 1 (“Complaint”).

¹ Defendant has since filed a Response to Plaintiff’s Objections. Dkt. No. 18.

II. STANDARD OF REVIEW

The Court is to “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b). Where, however, an objecting “party makes only conclusory or general objections, or simply reiterates his original arguments, the Court reviews the report and recommendation only for clear error.” Farid v. Bouey, 554 F. Supp. 2d 301, 307 (N.D.N.Y. 2008) (quoting McAllan v. Von Essen, 517 F. Supp. 2d 672, 679 (S.D.N.Y. 2007)) (citations and quotations omitted); see also Brown v. Peters, No. 95-CV-1641, 1997 WL 599355, at *2-3 (N.D.N.Y. Sept. 22, 1997). “A [district] judge . . . may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1).

III. DISCUSSION

Plaintiff raises three general objections to the adoption of the Report-Recommendation. Plaintiff first contends that the Magistrate Judge’s recommendation that the residual functional capacity determination was supported by substantial evidence should be rejected. Obj. at 1-3. Plaintiff next argues that the Magistrate Judge’s recommendation that the ALJ’s credibility determination was supported by substantial evidence in the record should be rejected. Id. at 3. Finally, Plaintiff contends that the Magistrate Judge’s Step 5 recommendation should be rejected. Id. at 3.

These general objections are substantively identical to the arguments raised by Plaintiff in his Brief. See generally Dkt. No. 12 (“Plaintiff’s Brief”). Because Plaintiff has failed to raise any new arguments or identify any potential defects in the Magistrate Judge’s reasoning beyond its failure to yield a recommended outcome in Plaintiff’s favor, the Court reviews the Report-

Recommendation in its entirety for clear error. Farid, 554 F. Supp. 2d at 307. Upon a thorough review of the Report-Recommendation and the record before it, the Court finds no such error. As a result, the Court adopts the Report-Recommendation in its entirety.

IV. CONCLUSION

Accordingly, it is hereby:

ORDERED, that the Report-Recommendation (Dkt. No. 16) is **APPROVED and ADOPTED in its entirety**; and it is further

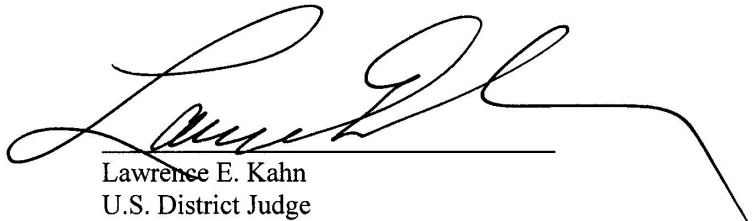
ORDERED, that the decision of the Commissioner is **AFFIRMED**; and it is further

ORDERED, that Plaintiff's Complaint (Dkt. No. 1) is **DISMISSED**; and it is further

ORDERED, that the Clerk of the Court serve a copy of this Decision and Order on all parties.

IT IS SO ORDERED.

DATED: January 18, 2013
Albany, New York



Lawrence E. Kahn
U.S. District Judge